

LABONI A. HOQ (SBN 224140)
laboni@hoqlaw.com
HOQ LAW APC
P.O. Box 753
South Pasadena, California 91030
Telephone: (213) 973-9004

EVA BITRAN (SBN 302081)
ebitran@aclusocal.org
ACLU FOUNDATION OF SOUTHERN CALIFORNIA
1313 West Eighth Street
Los Angeles, California 90017
Telephone: (213) 977-9500
Facsimile: (213) 915-0219

Attorneys for Plaintiff
(additional counsel information on next page)

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION of Southern
California,

Plaintiff,

v.

UNITED STATES IMMIGRATION
AND CUSTOMS ENFORCEMENT,
UNITED STATES DEPARTMENT
OF HOMELAND SECURITY,

Defendants.

Case No. 2:22-CV-04760-SHK

**PLAINTIFF'S STATEMENT OF
GENUINE DISPUTES OF
MATERIAL FACT REGARDING
DEFENDANT U.S. IMMIGRATION
AND CUSTOMS
ENFORCEMENT'S MOTION FOR
SUMMARY JUDGMENT [ECF NO.
113]**

Honorable Shashi H. Kewalramani
United States Magistrate Judge

1 EUNICE CHO (*pro hac vice*)
2 *echo@aclu.org*
3 AMERICAN CIVIL LIBERTIES UNION FOUNDATION
4 NATIONAL PRISON PROJECT
5 915 Fifteenth Street NW, 7th Floor
6 Washington, DC 20005
7 Telephone: (202) 548-6616

8 KYLE VIRGIEN (SBN 278747)
9 *kvirgien@aclu.org*
10 AMERICAN CIVIL LIBERTIES UNION FOUNDATION
11 NATIONAL PRISON PROJECT
12 425 California St., Suite 700
13 San Francisco, CA 94104
14 Telephone: (202) 393-4930

15 *Attorneys for Plaintiff*

PLAINTIFF’S STATEMENT OF GENUINE DISPUTES OF MATERIAL FACT

| ICE’s Uncontroverted Facts and Supporting Evidence | Plaintiff’s Response to ICE’s Cited Fact and Supporting Evidence |
|---|---|
| <p>1. Plaintiff’s FOIA Request sought “any and all records that were prepared, received, transmitted, collected, and/or maintained by ICE or DHS that describe, refer, or relate to the release of hospitalized detainees from custody before their death; any records related to release of individual detainees once hospitalized; and any records related to the death of such detainees after their release from custody, including any communications or investigations” dating from January 1, 2016.</p> <p><i>Evidence:</i> Dkt. 24 (First Amended Complaint), ¶ 35 & Ex. A thereto (Dkt. 24-1 at 2-14).</p> | <p>1. Disputed. Plaintiff’s request contains the quoted language, but the specific records sought are spelled out in significant detail, which is not included in this fact. ECF No. 1-1 (Plaintiff’s FOIA Request), 5-7. Additionally, Plaintiff’s request seeks documents “from January 1, 2016 to the present,” “[u]nless otherwise noted.” <i>Id.</i> at 4. Only Parts 2-9 of Plaintiff’s request are limited to this date range. Part 1 is not. Part 1 specifies that the request is made “without limitation to date.” <i>Id.</i> at 5.</p> <p><i>Evidence:</i> ECF No. 1-1, 4-7.</p> |
| <p>2. ICE received the FOIA Request on May 2, 2022.</p> <p><i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 4.</p> | <p>2. Disputed. Plaintiff sent this request by email on April 29, 2022.</p> <p><i>Evidence:</i> ECF No. 24-1 (Email from Michael Kaufman), 14.</p> |
| <p>3. On May 16, 2022, the ICE FOIA Office sent Plaintiff a letter acknowledging receipt of the FOIA request. It was assigned tracking number 2022-ICFO-16321.</p> <p><i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 5.</p> | <p>3. Undisputed but immaterial.</p> |
| <p>4. When the ICE FOIA Office receives a FOIA request, the intake staff evaluates it to determine if it is a proper FOIA request per DHS FOIA regulation 6</p> | <p>4. Undisputed but immaterial.</p> |

| | | |
|----|---|-------------------------------|
| 1 | C.F.R. § 5.3. Generally, a FOIA request is considered proper and in compliance with DHS regulations if it reasonably describes the records sought and the records are under the purview of ICE. | |
| 2 | <i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 9. | |
| 3 | | |
| 4 | | |
| 5 | | |
| 6 | 5. Proper FOIA requests are entered into a database known as Secure Release and assigned a case tracking number. Based upon the requestor's description of the records being sought and ICE FOIA's knowledge of the various program offices' missions, the ICE FOIA Office identifies the program office(s) likely to possess responsive records and tasks the appropriate program office(s) to conduct the necessary searches. | 5. Undisputed but immaterial. |
| 7 | | |
| 8 | | |
| 9 | | |
| 10 | | |
| 11 | | |
| 12 | | |
| 13 | | |
| 14 | <i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 10. | |
| 15 | | |
| 16 | 6. ICE records are maintained by leadership offices and/or within ICE directorates, including but not limited to, the Office of Public Affairs (OPA), the Office of Enforcement and Removal Operations (ERO), the Office of Professional Responsibility (OPR) and the ICE FOIA Office. The program offices are typically staffed with a designated point of contact (POC) who is the primary person responsible for communications between that program office and the ICE FOIA Office. Each POC is a person with detailed knowledge about the operations of his/her respective program office. | 6. Undisputed but immaterial. |
| 17 | | |
| 18 | | |
| 19 | | |
| 20 | | |
| 21 | | |
| 22 | | |
| 23 | | |
| 24 | | |
| 25 | | |
| 26 | | |
| 27 | <i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 11. | |
| 28 | | |

| | | |
|----|--|--|
| 1 | 7. Upon receipt of a proper FOIA request, the ICE FOIA Office will identify which program offices, based upon their experience and knowledge of ICE's program offices, within ICE are reasonably likely to possess records responsive to that request, if any, and task the relevant program offices with searches. | 7. Plaintiff understands this fact to set out the process by which ICE intends to respond to FOIA requests and not to state that ICE has carried out this process accurately in this case. On that understanding, undisputed but immaterial. |
| 2 | | |
| 3 | | |
| 4 | | |
| 5 | | |
| 6 | | |
| 7 | <i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 12. | |
| 8 | | |
| 9 | 8. Once the ICE FOIA Office determines the appropriate program offices for a given request, it provides the POCs within each of those program offices with a copy of the FOIA request and instructs them to conduct a search for responsive records. The POCs then review the FOIA request, along with any case-specific instructions that may have been provided and, based on their experience and knowledge of their program office practices and activities, forward the request and instructions to the individual employee(s) or component office(s) within the program office that they believe are reasonably likely to have responsive records, if any. | 8. Plaintiff understands this fact to set out the process by which ICE intends to respond to FOIA requests and not to state that ICE has carried out this process accurately in this case. On that understanding, undisputed but immaterial. |
| 10 | | |
| 11 | | |
| 12 | | |
| 13 | | |
| 14 | | |
| 15 | | |
| 16 | | |
| 17 | | |
| 18 | | |
| 19 | | |
| 20 | | |
| 21 | <i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 12. | |
| 22 | | |
| 23 | 9. In conformity with the ICE FOIA Office's instructions, the individuals and component offices are directed to conduct searches of their file systems, including both paper files and electronic files, which in their judgment, based on their knowledge of the manner in which they routinely keep records, would most likely be the files to contain responsive | 9. Plaintiff understands this fact to set out the process by which ICE intends to respond to FOIA requests and not to state that ICE has carried out this process accurately in this case. On that understanding, undisputed but immaterial. |
| 24 | | |
| 25 | | |
| 26 | | |
| 27 | | |
| 28 | | |

| | | |
|----|--|--|
| 1 | documents. | |
| 2 | <i>Evidence:</i> Declaration of Fernando | |
| 3 | Pineiro, ¶ 12. | |
| 4 | 10. Once those searches are completed, | 10. Plaintiff understands this fact to set |
| 5 | the individuals and component offices | out the process by which ICE intends to |
| 6 | provide any potentially responsive | respond to FOIA requests and not to |
| 7 | records to their program office's POC, | state that ICE has carried out this |
| 8 | who in turn, provides the records to the | process accurately in this case. On that |
| 9 | ICE FOIA Office. The ICE FOIA Office | understanding, undisputed but |
| 10 | then reviews the collected records for | immaterial. |
| 11 | responsiveness and the application of | |
| 12 | appropriate FOIA Exemptions. | |
| 13 | <i>Evidence:</i> Declaration of Fernando | |
| 14 | Pineiro, ¶ 12. | |
| 15 | 11. ICE employees maintain records in | 11. Undisputed but immaterial. |
| 16 | several ways. ICE program offices use | |
| 17 | various systems to maintain records, | |
| 18 | such as investigative files, records | |
| 19 | regarding the operation of ICE programs, | |
| 20 | and administrative records. | |
| 21 | <i>Evidence:</i> Declaration of Fernando | |
| 22 | Pineiro, ¶ 13. | |
| 23 | 12. ICE employees may store electronic | 12. Undisputed but immaterial. |
| 24 | records on their individual computer | |
| 25 | hard drives or their program office's | |
| 26 | shared drive (if the office uses one). | |
| 27 | <i>Evidence:</i> Declaration of Fernando | |
| 28 | Pineiro, ¶ 13. | |
| | 13. The determination of whether or not | 13. Undisputed but immaterial. |
| | these electronic locations must be | |
| | searched in response to a particular | |
| | FOIA tasking, as well as how to conduct | |
| | any necessary searches, is necessarily | |
| | based on the manner in which the | |
| | employee maintains his/her files. | |

| | | |
|----|---|---|
| 1 | <i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 13. | |
| 2 | | |
| 3 | 14. Additionally, all ICE employees have access to e-mail. ICE uses the Microsoft Outlook e-mail system. Each ICE employee stores his/her files in the way that works best for that particular employee. ICE employees use various methods to store their Microsoft Outlook e-mail files - some archive their files monthly, without separating by subject; others archive their e-mail by topic or by program; still others may create PST files of their emails and store them on their hard drive or shared drive. | 14. Undisputed but immaterial. |
| 4 | | |
| 5 | | |
| 6 | | |
| 7 | | |
| 8 | | |
| 9 | | |
| 10 | | |
| 11 | <i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 14. | |
| 12 | | |
| 13 | 15. Each ICE employee stores his/her files in the way that works best for that particular employee. ICE employees use various methods to store their Microsoft Outlook e-mail files - some archive their files monthly, without separating by subject; others archive their e-mail by topic or by program; still others may create PST files of their emails and store them on their hard drive or shared drive. | 15. Undisputed but immaterial. |
| 14 | | |
| 15 | | |
| 16 | | |
| 17 | | |
| 18 | | |
| 19 | | |
| 20 | <i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 14. | |
| 21 | | |
| 22 | 16. Records received by the ICE FOIA Office from the program office POCs are assigned to a FOIA processor who determines whether or not the records are responsive to the FOIA request. If the records are responsive, the FOIA processor will redact information pursuant to the FOIA or Privacy Act, as appropriate, while simultaneously | 16. Plaintiff understands this fact to set out the process by which ICE intends to respond to FOIA requests and not to state that ICE has carried out this process accurately in this case. On that understanding, undisputed but immaterial. |
| 23 | | |
| 24 | | |
| 25 | | |
| 26 | | |
| 27 | | |
| 28 | | |

| | | |
|----|---|--|
| 1 | ensuring that all reasonably segregated non-exempt information is released. | |
| 2 | <i>Evidence:</i> Declaration of Fernando | |
| 3 | Pineiro, ¶ 15. | |
| 4 | 17. Frequently, the ICE FOIA Office | 17. Plaintiff understands this fact to set |
| 5 | must coordinate between multiple | out the process by which ICE intends to |
| 6 | program offices to ensure the program | respond to FOIA requests and not to |
| 7 | office records are properly redacted and | state that ICE has carried out this |
| 8 | information is correctly segregated. | process accurately in this case. On that |
| 9 | <i>Evidence:</i> Declaration of Fernando | understanding, undisputed but |
| 10 | Pineiro, ¶ 16. | immaterial. |
| 11 | 18. Once the ICE FOIA Office completes | 18. Plaintiff understands this fact to set |
| 12 | its coordination efforts and all | out the process by which ICE intends to |
| 13 | responsive records have been processed, | respond to FOIA requests and not to |
| 14 | the ICE FOIA Office releases the | state that ICE has carried out this |
| 15 | responsive records to the requestor. | process accurately in this case. On that |
| 16 | <i>Evidence:</i> Declaration of Fernando | understanding, undisputed but |
| 17 | Pineiro, ¶ 16. | immaterial. |
| 18 | 19. After reviewing the Request, and | 19. Undisputed but immaterial. |
| 19 | based on the information sought in the | |
| 20 | Request, the experience and knowledge | |
| 21 | of ICE's practices and activities and | |
| 22 | discussions with the Plaintiff, the ICE | |
| 23 | FOIA Office determined that because of | |
| 24 | the subject matter of the Request, OPR, | |
| 25 | various subcomponents of ERO, the | |
| 26 | Office of Regulatory Affairs and Policy | |
| 27 | (ORAP), and Homeland Security | |
| 28 | Investigations Joint Intelligence | |
| | Operations Center (JIOC) were the | |
| | program offices likely to have | |
| | responsive records (if such records | |
| | existed). | |
| | <i>Evidence:</i> Declaration of Fernando | |
| | Pineiro, ¶ 18. | |
| | 20. The ICE FOIA Office also agreed to | 20. Undisputed but immaterial. |
| | search the emails of former ICE | |

1 Directors at Plaintiff's request.

2 *Evidence:* Declaration of Fernando
3 Pineiro, ¶ 18.

4 21. Based on their subject matter
5 expertise and knowledge of the agency
6 record systems, the ICE FOIA Office
7 instructed these program offices to
8 conduct a comprehensive search for
9 records and to provide all potentially
10 responsive records located during that
11 search to the ICE FOIA Office for review
12 and processing.

13 *Evidence:* Declaration of Fernando
14 Pineiro, ¶ 18.

21. Disputed. The ICE FOIA Office did
not instruct these program offices to
construct a comprehensive search. To
the contrary, the ICE FOIA Office's
instructions to these program offices
contained various flaws detailed in
Plaintiff's summary judgment briefing.
Plaintiff sets out several examples
below:

For Parts One through Three, ICE
produced an email chain showing that
Adelanto ICE officials agreed to prepare
a death notification for Martin Vargas
Arellano. ECF No. 112-4, 177. The
people involved in this email chain are
redacted in the produced version, but
ICE is aware who was on this chain. ICE
admits it has not searched all of the
custodians on this chain, including the
ICE headquarters staff, who likely
would have been copied on missing
records, including follow-up
correspondence showing the referenced
death notification or any discussion of
why it was not completed. Additionally,
CRCL has produced an email to
unidentified "ICE Colleagues"
explaining that CRCL was preparing a
"formal expert recommendations
memo" regarding Mr. Arellano's death.
ECF No. 112-4, 208. ICE did not
produce this expert recommendations
memo, suggesting that it did not
appropriately search the unidentified
ICE employees on the email, or other
locations where it likely could be found.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Both of these failures are indicative of a failure to instruct program offices to comprehensively search.

For Part Five, Plaintiffs have identified that ICE keeps an “SDI list” that includes cases of detainees where there is “significant coordination required to repatriate *or to release* a detainee/resident in the United States due to their medical condition,” and that ICE holds regular “SDI meeting[s]” about these people. ECF No. 112-4, 125 (emphasis added). Records regarding the SDI list and meetings are responsive, but ICE has conducted no search at all for these records. *See* Pineiro Decl. ¶ 47.

For Parts Six and Seven, ICE’s FOIA Office undisputedly determined that JIOC was “likely to have responsive records (if such records existed).” Def’s SUMF ¶ 19. Statements by DHS confirm that JIOC has responsive “significant event reports.” DHS, Privacy Impact Assessment for the Significant Event Notification (SEN) System 3 n.4, Oct. 15, <https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice023a-sen-october2021.pdf> [https://perma.cc/7EEE-A6JW]. ICE has conducted no search at all of JIOC. *See* Pineiro Decl. ¶ 54.

For Part Eight, Plaintiff has provided concrete evidence indicating that ICE’s *Fraihat* records are, according to an ICE employee, “the only place” where ICE was capturing the COVID hospitalization data that would be

responsive to Plaintiff's request. ECF No. 112-4, 163 (Moon Dep. excerpts at 163:4-10); *see also* ICE, ERO COVID-19 Pandemic Response Requirements, at 9–14, 17 (Version 8.0, Apr. 2, 2022), <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities-v8.pdf> [<https://perma.cc/3JDD-AQZ8>]. ICE has conducted no search at all of these records. *See* Pineiro Decl. ¶ 74.

For Part Nine, even though the ICE FOIA Office identified nine custodians likely to have responsive information, it did not instruct them to do a comprehensive search. Instead, after a single attempt to run a search resulted in technical issues, the FOIA Office gave up on further searches. Pineiro Decl. ¶ 80. And even though the ICE FOIA Office identified “Sharepoint and eClinicalWorks” as locations likely to contain responsive information, it did not instruct ICE employees to do more than a single search for information about the four people Plaintiff identified in its FOIA request. Pineiro Decl. ¶¶ 76, 80, 81.

Evidence: Def's SUMF ¶ 19; Pineiro Decl. ¶¶ 45, 54, 74, 76, 80, 86; ECF No. 112-4, 125, 163 (Moon Dep. excerpts at 163:4-10), 177, 208; DHS, Privacy Impact Assessment for the Significant Event Notification (SEN) System 3 n.4, Oct. 15, <https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice023a-senoctober2021.pdf> [<https://perma.cc/7EEE-A6JW>]; ICE, ERO COVID-19 Pandemic Response

| | | |
|----|---|--|
| 1 | | Requirements, at 9–14, 17 (Version 8.0, Apr. 2, 2022), https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities-v8.pdf [https://perma.cc/3JDD-AQZ8]. |
| 2 | | |
| 3 | | |
| 4 | | |
| 5 | 22. All locations likely to contain records responsive to the Request (to the extent that they exist within ICE’s custody) were searched. | 22. Disputed. Several locations likely to contain records responsive to the Request were not searched at all. |
| 6 | | |
| 7 | | |
| 8 | <i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 18. | For example, in Part Five, Plaintiffs have identified that ICE keeps an “SDI list” that includes cases of detainees where there is “significant coordination required to repatriate <i>or to release</i> a detainee/resident in the United States due to their medical condition,” and that ICE holds regular “SDI meeting[s]” about these people. ECF No. 112-4, 125 (emphasis added). Records regarding SDI meetings and list are responsive, but ICE has conducted no search at all for these records. <i>See</i> Pineiro Decl. ¶ 47. |
| 9 | | |
| 10 | | |
| 11 | | |
| 12 | | |
| 13 | | |
| 14 | | |
| 15 | | |
| 16 | | |
| 17 | | |
| 18 | | |
| 19 | | |
| 20 | | |
| 21 | | |
| 22 | | |
| 23 | | |
| 24 | | |
| 25 | | |
| 26 | | |
| 27 | | |
| 28 | | |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| | |
|--|--|
| | <p>concrete evidence indicating that ICE’s <i>Frailhat</i> records are, according to an ICE employee, “the only place” where ICE was capturing the COVID hospitalization data that would be responsive to Plaintiff’s request. ECF No. 112-4, 163 (Moon Dep. excerpts at 163:4-10); <i>see also</i> ICE, ERO COVID-19 Pandemic Response Requirements, at 9–14, 17 (Version 8.0, Apr. 2, 2022), https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities-v8.pdf [https://perma.cc/3JDD-AQZ8]. ICE has conducted no search at all of these records. Pineiro Decl., ¶ 74.</p> <p>Additionally, there were several locations where ICE conducted a cursory search but did not search adequately. <i>See</i> Pl’s Resp. to Def’s SUMF ¶ 21.</p> <p><i>Evidence:</i> Def’s SUMF ¶ 19; Pineiro Decl., ¶¶ 45, 54, 74; ECF No. 112-4 at 125, 163 (Moon Dep. excerpts at 163:4-10); DHS, Privacy Impact Assessment for the Significant Event Notification (SEN) System 3 n.4, Oct. 15, https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice023a-senoctober2021.pdf [https://perma.cc/7EEE-A6JW]; ICE, ERO COVID-19 Pandemic Response Requirements, at 9–14, 17 (Version 8.0, Apr. 2, 2022), https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities-v8.pdf [https://perma.cc/3JDD-AQZ8].</p> |
| 23. Based on ICE’s searches, a total of 53,426 pages of potentially responsive | 23. Undisputed but immaterial. |

records were located, along with 911 pages of records referred to ICE from other departments.

Evidence: Declaration of Fernando Pineiro, ¶ 82.

24. Of those 53,426 pages, 21,153 pages and an Excel spreadsheet were determined to be responsive and produced to the Plaintiff.

Evidence: Declaration of Fernando Pineiro, ¶ 82.

24. Undisputed but immaterial.

Respectfully submitted this April 9, 2025.

/s/ Laboni Hoq

LABONI A. HOQ (SBN 224140)
laboni@hoqlaw.com
HOQ LAW APC
P.O. Box 753
South Pasadena, California 91030
Telephone: (213) 973-9004

EUNICE CHO (pro hac vice)
echo@aclu.org
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
NATIONAL PRISON PROJECT
915 Fifteenth Street NW, 7th Floor
Washington, DC 20005
Telephone: (202) 548-6616

EVA BITRAN (SBN 302081)
ebitrان@aclusocal.org
ACLU FOUNDATION OF
SOUTHERN CALIFORNIA
1313 West Eighth Street
Los Angeles, California 90017
Telephone: (213) 977-9500
Facsimile: (213) 915-0219

KYLE VIRGIEN (SBN 278747)
kvirgien@aclu.org
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
NATIONAL PRISON PROJECT
425 California St., Suite 700
San Francisco, CA 94104
Telephone: (202) 393-4930

Attorneys for Plaintiff